

Review of the South Australian Residential Tenancies Act

RECOMMENDATION PAPER
DECEMBER 2022

Consumer and Business Service:
CBSReforms@sa.gov.au

Submission prepared by the Toward Home Alliance; Toward Home Alliance



Toward Home Alliance (THA)

The Toward Home Alliance was established in response to the 2020 State Government reforms of the homelessness, domestic and family violence sectors within South Australia.

Guided by a Vision towards ending homelessness, THA consists of partners with International, National and Local presence and experience in delivering specialist homelessness and related services.

Review of the Residential Tenancies Act, Recommendations Paper

The Alliance commends the State Government for their leadership in the review of the Residential Tenancies Legislation and welcomes the opportunity provided by the Government to offer recommendations, including improved State regulation and transparency specific to the practices of landlords and real estate agents. The recommendations made by the Alliance are reflective of the lived experience of our clients and wider work force, many of whom are also existing tenants.

During the month of November the Alliance *held two consultations with its workforce and engaged with over 50 individuals* specific to the Review of the Residential Tenancies Act, Discussion Paper.

The Toward Home Alliance welcomes further opportunities to engage with Government, community organisations as well as the private sector, including agents and landlords to ensure that the **'right balance'** of legislative reform is achieved for all parties.

For additional information, please contact:

Shaya Nettle

Alliance Senior Manager, Toward Home Alliance

Mobile: 0458 024 284

email: snettle@lutherancare.org.au



Contents

Toward Home Alliance (THA) 1

Review of the Residential Tenancies Act, Recommendations Paper 1

1. Longer tenancies 3

2. Residential bonds 4

3. Rent bidding 5

4. Rooming houses and shared accommodation 5

5. Renting with pets 7

6. Housing standards and retaliatory evictions..... 8

7. Safety modifications and minor changes 9

8. Start of tenancy requirements 10

9. Domestic violence 11

10. Water billing 12

11. Illegal drug activity 13

12. Third party payments 14

13. Modernisation of language 15

14. Other considerations..... 16

1. Longer tenancies

Should the RTA include a requirement for landlords to provide prescribed reason for the termination of a periodic lease or the non-renewal of a fixed term tenancy agreement, and if so, what should these prescribed reasons be?

The Toward Home Alliance recommends:

- **No cause evictions to be abolished and removed from the RTA, noting there are sufficient existing reasons for lease termination provided in the RTA.**

Additionally, the Toward Home Alliance supports the recommendation made by Shelter SA to the RTA Review 2022, specifically:

- That the prescribed reasons must only include a breach of the tenancy agreement, sale of the property, family requiring property or major repair/renovation. There should be a system in place to check the vacancy of properties when tenants are evicted for reasons other than a breach of agreement. ***The Shelter SA Moving On report (2021)*** provides information about tenants being given the above reasons only to find that the properties are quickly advertised with large rent increases. The Shelter SA Moving On report for 2022 will be released at the end of November.

Should the RTA be amended to accommodate longer fixed term tenancy agreements?

The Toward Home Alliance recommends:

- **Inclusion of longer fixed term tenancy agreements within the Residential Tenancies Act.**

The Alliance holds the view, that the inclusion of longer fixed term tenancy agreements are a 'win-win' for both parties.

Longer term fixed tenancy agreements provides certainty for the tenant, whilst providing certainty of tenancy for the landlord, and potentially minimising for both parties the often high costs associated with relocation (tenant) and, or reletting (landlord).

The Toward Home Alliance recommends the inclusion of fixed term tenancy based on:

- **2 year**
- **3 year**
- **4 year**
- **5 year**

Should the minimum notice period required to the non-renewal of fixed term tenancy agreement be extended to 60-days?

The Toward Home Alliance recommends:

- **The notice period required to the non-renewal of fixed term tenancy agreement be extended to a minimum of 60 days.**

2. Residential bonds

Should the relevant limit be increased to \$800 to allow most tenants in SA to pay a bond of no more than the equivalent of 4 weeks rent?

The current system is inconsistent and lacks transparency often resulting in households paying different bond amounts in the private market. This includes the majority of people paying up to six weeks rent as bond.

The Toward Home Alliance recommends:

- **Tenants to pay a bond no more than the equivalent of 4 weeks rent in advance.**

Should the RBO be made mandatory and require additional tenant contact details upon registration to minimise unclaimed bonds?

The Toward Home Alliance recommends:

- **The RBO is made mandatory,**
- **Contact details** - Additional tenant contact details are collected upon registration, including next of kin, support contact details, for the sole and explicit purpose of minimising unclaimed bonds.
- **Tenant friendly access and usage** - Re-design of the current system ensuring the system is accessible and easy to navigate, when completing information, retrieving information, engaging including the use of images, educational and interactive prompts, the use and representation of language as well as visible referral points of assistance for the client. It could also include next of kin/support details to increase accountability for returning bonds. This is based on client feedback regarding the difficulties of navigating the current system.
- **Investment in consumer advocates** - Increase in consumer advocates for tenancy law, rights and responsibilities.

Specific to unclaimed bones, the Toward Home Alliance recommends:

- **Bond return and repurposing process** - If a bond is not claimed within a 3 year time frame, and evidenced that all measures have been taken to claim the bond, that the unclaimed bond is transferred into the newly created South Australia Consumer and Business Affairs Fund to support and fund Consumer and Tenancy Advocacy programs across the State, emphasising frontline advocacy supports for tenants.
- **Investment in ACCO's to support Aboriginal tenants** - For people who identify as Aboriginal, ACCO's are contracted to manage unclaimed bonds, including the process of locating, engaging with the person who has not has not claimed their bond for its return and to assist the person with the process, and/or manage unclaimed bonds to repurpose to support other community members.

3. Rent bidding

Should landlords and land agents be prohibited from advertising a property within a rent range, putting up for rent auction and soliciting offers to pay an amount of rent above the advertised price?

Yes. The Toward Home Alliance staff and lived experience of clients demonstrates that the practice of '**rent bidding**' has **increased during COVID**, which has resulted in the practice being 'normalised' as part of securing a rental property.

In addition, it is the experience of the Toward Home Alliance, that the practice of soliciting offers is a practice concealed by the landlord, agent. This results in the prospective tenant being left with no, or little choice, as demonstrated by the following case study:

"Two bedroom unit, might have been advertised for \$390.00 a week, but I was told pretty straight, lots of interest, would I consider paying \$410.00 a week, didn't have a choice and said yes. Doesn't sound like much, an extra \$20.00 a week but it is".

The Toward Home Alliance recommends:

- The immediate cessation of landlords and agents from advertising a property within a rent range, rent auction and, or soliciting offers to pay an amount of rent above the advertised price.
- Landlords and agents to advertise the rental amount for the property and following the 'let' of the property, publicly list the final rental amount alongside the original, advertised rental price. For example, rental property was advertised for \$270.00 per week, final rental cost \$420.00 per week.
- Acute monitoring of rent bidding in low income thresholds. Rent bidding excludes many of the community THA supports.
- The inclusion of penalties, including monetary breaches for such practices by landlords, real estate agents.
- Fair and reasonable principle: rent increases to be based on 'fair and reasonable' rises, such as 5-10% parameters, and implication on household re hardship context. Rental increases should only be permitted once within a tenancy or within 12 months, and capped. For example, we have seen 30-40% rent increases from \$320 to \$415 or \$300 to \$450, pushing people into homelessness.
- Where there is a perceived and, or actual rent bidding and, or related practices, that an independent investigation is conducted by South Australia (SA) Consumer and Business Affairs. In circumstances whereby a breach has been established and appropriate penalties applied, monetary penalties to be paid by the party is to be made into a newly created fund within Consumer and Business Affairs to support and fund Consumer and Tenancy Advocacy programs across the State.
- Where such practices have been substantiated that the information is made publicly available by SA Consumer and Business Affairs, enabling prospective tenants and others information to better match which agents they may wish to rent with, purchase and sell from and or have their asset held with.

4. Rooming houses and shared accommodation

Should the definition of a rooming house be amended to include rooming houses that accommodate 2 or more residents?

Yes.

Should the RTA establish a registration scheme for rooming houses that have 5 or more residents and require 'fit and proper' person checks for proprietors?

The Toward Home Alliance recommends:

- All rooming houses, providing accommodation for 3 or more unrelated adults, must be registered, police checks and working with vulnerable people screening must be required for owners and managers. There is no evidence that increased regulation will result in the withdrawal of rooming house properties from the sector and the perceived potential for this to occur must not prevent improvements to resident legal protections. *Please refer to the Shelter SA rooming house research paper and recommendations for further information.*
- The legal rights and responsibilities of lodgers and tenants living in granny flats should also be addressed by the RTA. The requirement that the granny flat tenant is a dependent of the occupants of the main house should be removed as the original intent was that granny flats were dependent on the main house for utilities not as dependent family members or blood relatives.

In addition, the THA recommends:

- No public funds to be used to fund tenancy related costs for unregistered rooming.
- Individuals, families residing in Government funded emergency accommodation should not be exited into unregistered rooming house accommodation.
- Rooming house leases should be standardised with a detailed schedule of all costs incurred and, or likely to be incurred by the Resident, including final exit clean of room and cost.
- Local Government has a critical role to ensure compliance with local laws, including undertaking site inspections, and the issue of site improvement notices.
- State and Local Government working together to incentive this part of the housing market to improve standards, quality of services offered, in particular community housing provider owned and operated rooming houses.
- Access to rooming house accommodation should be open to individuals aged 18 plus.
- No families, with accompanying children should be placed in rooming house accommodation, and Government should consider the funding of 'like' homelessness family programs in Victoria to divert, prevent families from entering into rooming, boarding house accommodation.
- No bonds should be paid and rent-in-advance should be limited to two weeks.

5. Renting with pets

Should the RTA include the presumption that a tenant who applies to keep a pet in a rental property cannot have their request unreasonably refused, provided the tenant agrees to comply with any reasonable conditions imposed by the landlord?

The Toward Home Alliance recommends:

- That a prospective tenant cannot have their request for a pet unreasonably refused, and in such instances that a request has been refused that a written reason is provided to the prospective tenant.

The Toward Home Alliance also acknowledges that currently, tenants are required to comply with various conditions, however, such conditions are often ad hoc, inconsistent for tenants and landlords.

The Toward Home Alliance recommends:

- That fair, reasonable, consistent and transparent lease conditions apply as they relate to pets, inclusive of pet and property suitability and appropriateness. This could include the establishment of an agreed definition of property to pet test. For example, a pet horse would not be suitable for a two bedroom unit with no yard.
- In line with the recommendation made by SA Shelter, upon advertising vacancies landlords and land agents should be required to specify what pets are acceptable in each property in relation to the species of animal, the number of pets, the maximum size or weight of the pet, registration, training, vaccination and if the pet can be kept inside the property to reduce the possibility of interactions with South Australian Civil and Administrative Tribunal (SACAT). The pet specifications should also be included in the rental agreement.

Should a pet bond scheme be introduced in SA?

The Toward Home Alliance does not support the introduction of a pet bond scheme.

Tenants are currently required to:

- Pay a bond
- As part of the lease agreement, and at their own cost, take out home and contents insurance
- Complete a condition report and the start and end of the tenancy and
- Engage in required property inspections.

There currently exists a number of '**checks and balances**' for the landlord for costs associated with 'evidenced' property damage caused by a pet as well as monitor any changes to the condition of the property as a result of a pet. Furthermore, the Toward Home Alliance is not aware of any literature evidence that suggests that accommodating a pet(s) will result in or contribute to additional property damage over and above a standard tenancy.

6. Housing standards and retaliatory evictions

Should the RTA include further complimentary provisions to those proposed under Section 1 of this paper to ensure tenants can exercise their rights without the risk of retaliatory eviction or rent increase?

The Toward Home Alliance supports the recommendation made by SA Shelter:

- Supported, additionally the Housing Safety Authority and Consumer and Business Services must work together to raise consumer awareness, particularly among vulnerable and low-income renters, about the safety standards and the services available to enforce them.

Should the RTA impose minimum energy efficiency standards in rental properties?

The Toward Home Alliance supports the recommendation made by SA Shelter:

- Supported, additionally, there is no evidence that introducing minimum energy efficiency standards will reduce rental supply. If some owners decided to sell their properties, this could add to the supply of housing available for purchase for owner occupiers or other investors. If public housing and community housing are included in a requirement for minimum energy standards, this must be financially supported by State Government, without sacrificing the net supply of social housing. Not Supported An early measure of requiring new appliances installed in rental properties to meet energy efficiency standards is not supported. If this measure is included in the RTA the term “new appliances” is too vague and must be better defined to reflect energy efficient heating and cooling. There is little point however in requiring energy efficient heating and cooling if homes do not have adequate window and door seals or sufficient insulation. Ceiling insulation and energy efficient heating and cooling should be the focus of any new requirements with a mandate to advertise the energy rating of the properties.

7. Safety modifications and minor changes

Should the RTA be amended to prevent the unreasonable refusal of safety modifications and minor changes including the installation of wall anchors, child safety gates, childproof latches, wireless outdoor cameras, showerheads, and internal window coverings?

The Toward Home Alliance recommends:

- That the RTA be amended to prevent the unreasonable refusal of safety modifications and minor changes including the installation of wall anchors, child safety gates, childproof latches, wireless outdoor cameras, showerheads, and internal window coverings.

8. Start of tenancy requirements

Should the RTA require prospective tenants to use a standardised application form in any application for a rental property that has questions that restrict the amount of personal information a landlord or land agent can gather about a prospective tenant?

The Toward Home Alliance recommends:

- Standardised prospective tenancy application, including the accompanying documentation.
- Standardised prospective tenancy application with the inclusion of questions that are for the sole and intentional purpose of the application.
- Consider and apply a housing history definition as defined by the prospective tenant, for example, if the prospective tenant has one housing history for a 15 year period, then the person should not be required to offer, provide additional references. Equally, multiple tenancies should not be regarded as poor housing history, the person may have house sat for a number of years, equating to multiple tenancies.

The Toward Home Alliance has, through client experience, identified a number of questions and information requirements that are deemed by clients and service providers as intrusive, inappropriate, racist and irrelevant to the application.

For example, ***‘why are you moving’, ‘why did you leave your last place’,*** (most inappropriate for women escaping domestic, family violence) ***‘passport number’, ‘provide three months of your bank statements*** (how is the client’s expenditure patterns of relevancy, it should suffice to produce a current income statement), ***‘requiring to produce a cover letter in order to sell myself’.***

The recent, and major data breaches across Australia has provided many lessons including the information organisations request, how the information is collected, how the information is stored, who has access, how long is the information kept for and its relevancy to the activity, for example, an application for rental housing.

Should the RTA be amended to prohibit landlords, land agents and database operators from charging a fee to a person who requests a copy of the personal information about themselves that is listed on a residential tenancy database?

The Toward Home Alliance recommends:

- That the RTA be amended to prohibit a fee being charged to a person who request a copy of the personal information about themselves that is listed on a residential tenancy database. The imposition of a fee serves as barrier and excludes most of our clients from accessing information held about them. In most other organisations, including those within the Toward Home Alliance, this information is readily available to access by the client, in line with the relevant privacy legislation provisions, requirements. This should be no different in this circumstance.
- Review of rental vacancy websites and processes including fees charged and the fees charged which often serve an access barrier for low to moderate income households resulting in community organisations having to meet such costs on behalf of the client.

9. Domestic violence

Are further amendments required to strengthen financial protections for victims of DV who are renting?

The Toward Home Alliance recommends:

- That financial protection for victims of domestic violence should be strengthened and advice sought from the State-wide Domestic, Family Violence Alliance.
- That security upgrades requested, including security doors, improved window and doors locks should be considered as dwelling amendments and therefore adds to the quality of the home as well as the tax deductions for the landlord. In addition, should the landlord determine, post the exit of the tenant from the dwelling, the additional security measures are to be removed, and the costs is to be borne by the landlord, and recouped as part of the normal taxation process.
- Offering incentives to landlords, real estate agents to provide security, additional security to dwellings.
- Review of Government funded programs that support victims, survivors of domestic, family violence by providing funding to home safety, for example, additional home security measures to ensure that the programs are suitable for access in private rental.

10. Water billing

Should the RTA require landlords to provide tenants with a copy of any water bill the tenant is required to pay within 30 days of receiving the water bill?

Should responsibility for the payment of the water supply fee be paid by the landlord, as is the standard practice in other jurisdictions?

Should landlords have a full or partial obligation to pay the excess water charges resulting from a reported water leak that remains unrepaired, noting this would require the RTA to define how excess water charges are identified?

The Toward Home Alliance recommends:

- That landlords should provide tenants with copy of any water bill to pay within 30 days of receiving the water bill.
- That the payment of the water supply fee should be paid by the landlord.
- In line with the public housing system, the landlord is responsible for water rates and tenants for usage. The exception being, in instances where excess water usage has occurred due a reported water leak that has remained unrepaired, and or damage to the property not caused by the tenant, for example, structural wear and tear causing plumbing issues, the landlord is liable.

11. Illegal drug activity

Should landlords who know or suspect that illicit drugs have been manufactured or regularly smoked in their property be required to undertake necessary remediation before leasing the property and provide evidence of this to prospective tenants?

The Toward Home Alliance supports the recommendation made by SA Shelter:

- That landlords who know or suspect that illicit drugs have been manufactured or regularly smoked in their property that they (landlords) are required to undertake necessary remediation before leasing the property and provide evidence of this to prospective tenants. Additionally, where a tenant knows or suspects that illicit drugs have been manufactured or regularly smoked in their property, and notify their landlord or land agent, landlords should be responsible for paying for testing and if contamination is found, for remediating contamination, including alternative accommodation and storage of furniture and belongings. If tenant belongings are contaminated, compensation should be available for their replacement or remediation. Reputable testing and remediation services are required.
- That landlords, real estate agents provide evidence to the tenant that works have been undertaken, the nature of the works and the details of the company engaged to complete the works.

12. Third party payments

Should the RTA prohibit landlords or land agents charging tenants an additional fee to make rental payments, whether this is directly or indirectly by passing on costs from third parties engaged by the landlord or and agent to facilitate payment?

The Toward Home Alliance recommends:

- That the RTA prohibit landlords and, or real estate agent from charging tenants an additional fee to make rental payments. THA has received a number of case studies whereby tenants have been charged banking fees, credit card fees, all fees that the Alliance view as unnecessary, unfair and further impacts a household's cost of living.

13. Modernisation of language

Should terms within the RTA be updated? If so, which terms should be revised and what should they be replaced with?

The Toward Home Alliance recommends:

- That the modernisation of language occurs within the RTA and draws on the experience of other States and Territories, including Victoria as a starting point. Language modernisation will provide consistency and transparency irrespective of the person's location and may further the advocacy towards a National Framework for Residential Tenancies Law.

14. Other considerations

SA Commissioner of Residential Tenancies

The Toward Home Alliance recommends:

- The establishment of a 'like' Victorian Commissioner of Residential Tenancies in South Australia.

Expansion of Tenancy Information and Advocacy programs

The Toward Home Alliance recommends:

- The expansion of Tenancy Information and Advocacy programs within local communities which includes the offering of information and education sessions within communities, working closely with real estate agents, offering client referral pathways to clients seeking financial assistance to establish, maintain a tenancy as well as representation of clients within dispute resolution processes.

Rent Increases

The Toward Home Alliance supports the recommendation by SA Shelter:

- That the amount that rents may be increased, and the frequency of rent increases must be included in the RTA to prevent the future occurrences of unreasonable rent increases that we have seen since the commencement of the pandemic. Tenant education is required to increase access to SACAT, to challenge unreasonable rent increases, without fear of eviction or the non-renewal of leases. Rent controls have been introduced in Australia in the past, in times of social and economic insecurity. If governments are not willing to consider introducing rent controls again, rent increase guidelines must be included in the RTA.

Mandatory Contents Insurance

- THA clients have reported, that as part of the lease agreement, they are required to 'take out' home and contents insurance. This cost, if required by the agent, landlord should be met by the agent, landlord, and 'choice', afforded to the tenant.

Final Exit Clean and Competitive Quotes

Clients often report to the Toward Home Alliance of the 'bill shock' associated with exit costs from a property.

The Toward Home Alliance recommends:

- All lease agreements to be accompanied by a tenancy cost schedule listing 'real' and 'possible' costs associated with the tenancy and a price range for each item, for example, carpet steam cleaning on exit \$150.00; skip cost (for removing items left in backyard), \$300 etc. In addition, tenants are to be afforded the opportunity to engage registered trades, including exit cleaning and be provided with a reasonable timeframe to organise. Clients have reported to the Toward Home Alliance, significant costs associated with final cleans, even though a regular inspection was undertaken a month prior and no issues identified by the agent.